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No. 167.
Supl. Brf. of Shepherd (Cy. Co

Filed Oct. 19, 1900.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

THE BOARD OF COMMISSIONERS OF WILKES COUNTY, *et al.*,
APPELLANTS,
against
W. N. COLER AND COMPANY, APPELLEES,

Supplementary Brief for Stanly County.

BRIEF OF
JAMES E. SHEPHERD,
FOR COMMISSIONERS OF STANLY COUNTY.

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Under our view of the certificate in this case, only the general question, as to the effect of a non-compliance with the constitutional provisions as to the entry of the ayes and nays on the journals upon the rights of *bona fide* purchasers, is to be considered. As we have said, the State Supreme Court and the Federal Court of Appeals have decided that the special acts of the Legislature were void, and that a *bona fide purchaser* was bound to examine into the question of power. Inasmuch, however, as it has been suggested that questions peculiar to the Stanly County and other cases awaiting the decision of the general question referred to may in some way be discussed on the argument, we desire to say an additional word or two.

The bonds contain the following recital :

This bond "is issued by authority of an Act of the General Assembly of North Carolina, ratified the third day of March, A. D. 1887, entitled, 'An Act to amend the charter of the

Yadkin Railroad Company,' and of sections 1996, 1997, 1998 and 1999 of The Code of North Carolina, and authorized by a majority vote of the qualified voters of Stanly County at an election regularly held for that purpose on the 15th day of August, 1889, duly ordered by the Board of Commissioners of Stanly County." It is claimed that if the Act of 1887 is invalid, the holders of the bonds can still recover under the above sections of The Code.

Now the Supreme Court of North Carolina and the Federal Court of Appeals have decided that those sections relate~~d~~ only to unfinished railroads begun before the adoption of the Constitution of 1868. There is no recital that the Yadkin Railroad was such a railroad, and there is strong authority in this Court to the effect that a mere reference to the authority, as in this case, will not estop the county from showing that the required conditions were absent. Even if we are wrong in this, the case of *Belo* v. *Commissioners*, 76 N. C., 489, and the decisions cited therein from this Court, such as *Coloma* v. *Evans*, 92 U. S., 484, relied upon by counsel, would be wholly inapplicable, because ***the recitals themselves show the absence of such conditions.*** In other words, the recitals show ***that this road was not incorporated until after the adoption of the Constitution of 1868.***

It will be noted that the bond recites that the Act of 1887 is to "amend the charter of the Yadkin Railroad Company." Of course, the purchaser is charged with notice of the original charter, which is to be amended, and this charter is referred to in the recited act as chapter 236, Acts 1870.

Thus there is not only a failure to recite the proper conditions, but ***absolutely a recital to the contrary.***

The purchaser of these bonds then had notice from the recitals that this road was not commenced or even chartered until after 1868, and we confidently insist that all the arguments founded upon the line of cases like those above mentioned have nothing to do with this case. *Gunnison* v. *Rollins*, 173 U. S., 255, and cases cited. The record of the County Commissioners shows that this road was not commenced until after 1868, and indeed it is substantially an admitted fact in the case and is so found. The purchaser had notice of this, as state and if the special act is invalid, we respectfully insist that he can derive no support from the above-mentioned sections of The Code.

JAS. E. SHEPHERD,
Of Counsel for Stanly County.